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IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

86412-8

Supreme Court No. 86412-8

(Court of Appeals No. 65101-3-1)

In the Matter of the Estate of James Haviland.

DONALD HAVILAND, ELIZABETH HAVILAND,
And MARTHA CLAUSER

Appellants,

v.

MARY HAVILAND,

Respondent.

ADMINISTRATOR'S ANSWER TO PETITION FOR REVIEW

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ORIGINAL

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I. IDENTITY OF RESPONDING PARTY

This answer to the petition for review is filed on behalf of Richard Furman, the Court-Appointed Administrator of the Estate of Dr. James Haviland (hereafter the "Administrator"). In the Court of Appeals, the Administrator entered a notice of appearance and joined in the appellants' motion for discretionary review.

II. RESTATEMENT OF THE ISSUE PRESENTED FOR REVIEW

In July 2009, the Washington Legislature amended RCW 11.84 *et seq.* to prohibit a person who exploits a vulnerable adult from benefiting from the vulnerable adult's death. The Court of Appeals held that the 2009 amendments apply prospectively to the post-enactment petition filed by the Administrator to determine the application of the amendments in the administration of Dr. Haviland's estate. The Administrator had sought a determination whether Mary Haviland was an "abuser" and thus not entitled to any death benefits. The Superior Court ruled that the abuser amendments did not apply retroactively and thus failed to reach the merits. The Court of Appeals reversed the Superior Court, ruling that the statute was being applied prospectively, and remanded for a factual determination of whether Mary is an "abuser" and prohibited from receiving death benefits.

If the Supreme Court were to accept review, then the issue presented for review is whether the Court of Appeals erred in concluding that the 2009 amendments apply prospectively to the administration of estates post-enactment for the purpose of determining a person's eligibility to receive a distribution from the estate. Contrary to petitioner's argument, the Court of Appeal's analysis does not conflict with Supreme Court precedent. Furthermore, the issue is not novel and presents no question of substantial public interest or constitutional significance.

III. RESTATEMENT OF THE CASE

The Administrator joins in the restatement of the case set forth by Donald Haviland, Elizabeth Haviland and Martha Clauser in their answer to the petition.

IV. ARGUMENT AGAINST REVIEW

A. The Court of Appeals Analysis is Consistent with Supreme Court Analysis in Like Cases.

Petitioner argues that the Court of Appeals' decision is in conflict with Supreme Court precedent regarding retroactivity. Petitioner, however, fails to address the Court of Appeal's correct analysis that the statute is not being applied retroactively. See Petition for Review at 13-15.¹ The Court

¹ The petitioner argues her view of the law without addressing the Court of Appeals' analysis until the bottom of page 13 of the petition. Then, all the petition offers from page 13 to page 15 is conclusory criticism without explaining why the Court of Appeals' cases and evaluation of the issue are wrong.

of Appeal's analysis is straightforward and consistent with the Supreme Court authority it cites.

The Court of Appeals' analysis of the prospective/retroactive issue properly begins with an evaluation of the objective or purpose behind the legislation -- i.e., whether the purpose is to provide for the future distribution of decedents' estates or rather whether the purpose is to regulate past financial exploitation. *Estate of Haviland*, 161 Wn. App. 851, 856, 251 P.3d 289 (2011). The Court of Appeals concludes that the legislative concern is for the proper disposition of decedents' estates. *Id.*² This requires an adjudication of the persons entitled to distributions. *Id.* Here, in making this determination, the statute is applied prospectively during the administration of Dr. Haviland's estate, pursuant to the Administrator's petition, for purposes of determining whether Mary Haviland is entitled to any distribution from the estate.

This approach is wholly consistent with Supreme Court analysis in analogous cases. The Court of Appeals cited *Aetna Life Ins. Co. v. Washington Life & Disability Ins. Guaranty Ass'n*, 83 Wn.2d 523, 520 P.2d 162 (1974) to explain the analysis. In the *Aetna Life* case, the legislative attention was on the claims administration of receivership

² The petitioner does not explain why it is wrong for the Court of Appeals to focus on the purpose or objective of the legislation as a threshold matter. Petitioner also does not explain why the Court of Appeals conclusion is wrong that the legislative concern is for the proper disposition of decedents' estates not the regulation of financial exploitation.

proceedings for insolvent insurers, similar to the legislative attention here on the claim administration of the estates of decedents. The statute in *Aetna Life* applied prospectively to receivership proceedings post-enactment just like the statute here applies prospectively to estate proceedings post-enactment. The statute is not being applied retroactively simply because some of the factual requisites for its application are drawn from a time prior to the passage of the legislation. See *State v. Scheffel*, 82 Wn.2d 872, 879, 514 P.2d 1052 (1973) (A statute “is not retroactive because some of the requisites for its actions are drawn from a time antecedent to its passage . . .”).³

The Court of Appeals also explained that the petitioner’s reliance on *In re Estate of Burns*, 131 Wn.2d 104, 928 P.2d 1094 (1997) was misplaced. The subject of the legislation in *Estate of Burns* was DSHS’s right to recover pre-death payment of Medicaid benefits. The legislative purpose was creation and collection of debt. The concern was “not the disposition of [the decedents’] estates.” *Estate of Haviland*, supra 161 Wn. App. at 858 quoting *Estate of Burns*, supra 131 Wn.2d at 113.

In contrast, here as the Court of Appeals explained, the legislation operates to determine the disposition of decedents’ estates. This is a determination to be made here on remand and is a prospective application

³ Again, the petitioner wholly ignores *Aetna Life*. The petition offers no analysis as to why this Supreme Court authority does not support the result.

of the statute to determine Mary's right post-enactment to receive death benefits. "Thus, the precipitating event was the probate petition because it determined the receipt of benefits." *Estate of Haviland*, supra 161 Wn. App. at 858.⁴

In sum, the statute applies prospectively to the distribution of decedents' estates post-enactment. Here, distribution has not yet occurred. Whether Mary Haviland is entitled to a distribution from the estate is a factual determination remanded to the Superior Court for decision. The circumstance that the factual pre-requisites for the Administrator's petition pre-dates the amendments does not make the application of the statute retroactive.

The Supreme Court authority on this point, cited above, supports the Court of Appeal's decision. It is not in conflict with it. Petitioner simply argues her contrary opinion without showing error in the analysis of the issue and authority used by the Court of Appeals.

B. There Are No Issues of Constitutional Significance or Substantial Public Interest.

The petitioner also claims there are constitutional and public policy arguments for accepting review. Petition for Review at 15-18. The constitutional argument appears based on reasoning that if the legislation

⁴ Once more, the petition does not articulate why this analysis of *Estate of Burns* is incorrect.

is applied retroactively, then there is not "fair warning" of the new and dire legal consequences from abusing and stealing from vulnerable adults. This position clearly overreaches because the equitable principles supporting the abuser amendments are fundamentals of law and morality.

The slayer statute and the abuser amendments are codifications of long-standing universally recognized common law equitable principles. This point is expressly stated in RCW 11.84.900 and RCW 11.84.170. The former statute sets forth the maxim of equity law that "no person shall be allowed to profit by his or her own wrong, wherever committed." The latter statute, in subsection (2), provides that the abuser amendments are to be applied in the court's discretion based upon what the court deems equitable, reinforcing the equitable underpinnings of the legislation. In the final analysis under the statute, as at common law, the consequences from the misconduct are determined from an assessment of what is equitable.

The common law equitable principles are stated in *In re Tyler's Estate*, 140 Wn. 679, 250 P. 456 (1926) at a time before the existence of any legislation on this subject. The Washington Supreme Court, in 1926, quoted the New York Court of Appeals in *Riggs v. Palmer*, 115 N.Y. 506, 22 N.E. 188 (1889) as follows:

No one shall be permitted to profit by his own fraud, or take advantage of his own wrong, or to found any claim upon his own iniquity, or to acquire property by his own crime. These

maxims are dictated by public policy, have their foundation in universal law administered in all civilized countries, and have nowhere been superseded by statutes. . . . These maxims without any statute giving them force or operation, frequently control the effect and nullify the language of wills. . . . Under such circumstances [murder or fraud], what law, human or divine, will allow [the wrongdoer] to take the estate and enjoy the fruits of his crime?

Id. at 684-685.

This principle of public policy is stated in RCW 11.84.900 quoted above. Here, to paraphrase the Supreme Court in *Tyler's Estate* and extend it forward to 2009, "the legislature . . . expressly adopted the common law rule with its maxims that no one shall profit by his own wrong; also the common law maxim that one shall not found any claim upon his own iniquity." *In re Tyler's Estate*, supra 140 Wn. at 687. "Without their [the maxims of equity] recognition and enforcement by the courts, their judgments would excite the indignation of all right-thinking people." *Id.* at 687.⁵

This remains true today. No "right-thinking" person needs any further "fair warning" of consequences from such misconduct. Additionally, Mary Haviland had no vested interest or right in Dr. Haviland's property. Neither the common law rule nor the 2009 abuser amendments deprive

⁵ "This rule is applicable whether the claimant be a thief or murderer. The idea of permitting a thief or a murderer to enjoy the fruits of his own crime is not only abhorrent to our courts but is calculated to excite the just indignation of right thinking people." *Hogan v. Martin*, 52 So.2d 806, 809 (1951) (Chapman, J., dissenting).

anyone of a property right. As stated in *In re Tyler's Estate, supra*, applying the common law rule:

Respondent also contends that to deprive him of this property is to deprive him of a property right conferred upon him by statute, as punishment for the commission of the crime. That is not correct. . . . This property was not his, and he is not being deprived of it. He has sought to acquire it because of the crime he committed for the purpose of acquiring it. He had no vested right or interest in it. It is, therefore, not adding to his punishment, nor taking property from him which belonged to him.

Id. at 691. Stated otherwise, by abusing and financially exploiting Dr. Haviland (if that is the Superior Court's judgment), Mary Haviland by her conduct prevents the property interest from vesting in herself. There is no forfeiture of any vested right.

The petitioner's substantial public interest argument is equally superficial. The slayer and abuser statutes exist to effectuate the long-accepted policy that a killer and a thief should not profit from his or her wrong. There certainly is no substantial public interest to the contrary. Nor does the petition demonstrate that this issue is recurring in nature and impacts a large number of persons.

V. CONCLUSION

The Supreme Court should deny review. The Court of Appeals properly resolved the issue and remanded to the Superior Court for a determination of whether Mary Haviland is an "abuser." The case should

be allowed to proceed forthwith and the estate closed and distributed to the proper beneficiaries.

RESPECTFULLY SUBMITTED this 7 day of September 2011.

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CERTIFICATE OF SERVICE

I certify that on the date noted below, I sent the following documents to the individuals listed below by ABC Legal Messengers: Administrator's Answer to Petition for Review and Certificate of Service.

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